

North Pacific Fishery Management Council

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October 11, 2012

National Marine Fisheries Service, NOAA
ATTENTION: Wesley Patrick
1315 East-West Highway, Room 13436
Silver Spring, Maryland, 20910

SUBJECT: Comments on Advanced Notice of Proposed Rulemaking for revisions to National Standard 1 Guidelines

Mr. Patrick:

Please accept these comments on behalf of the North Pacific Fishery Management Council regarding potential revisions to the NS1 Guidelines. We understand that any process to revise the guidelines would provide additional opportunities for more specific comments; therefore, these comments represent our initial, general thoughts on several categories specified in the May 3, 2012 Federal Register Notice. We also requested our Scientific and Statistical Committee (SSC) to review the guidelines, and a subgroup of our SSC worked over the summer to formulate their initial comments – these comments are attached to this letter. The SSC comments focus on technical aspects of the guidelines, while the Council's comments (below) are intended to focus more on the policy-oriented aspects of the guidelines. We encourage you to consider both our SSC comments as well as the Council's more general comments, noting that there are a few instances where the Council's comments diverge from, or provide clarification to, the SSC comments as they relate to key policy issues – these will be noted below.

Stocks in a fishery

As noted in the SSC comments, the guidelines should be clarified with regard to when a species may be included in the Ecosystem Component (EC) of an FMP; i.e., if a stock is the target of a particular fishery and is managed under the FMP for that fishery, it should be permissible to list that stock in the EC of a different FMP, even if the stock is considered 'overfished'. This is currently the case for two crab species in the North Pacific, which are listed in the EC of the BSAI groundfish FMP, even though they are determined to be 'overfished' under their primary (crab) FMP. We believe the guidelines need to be clarified to explicitly allow this situation. We are concerned that the four criteria for allowing a stock to be included in the EC are overly constraining in a general sense, above and beyond the example cited above, and as such force some stocks 'in the fishery' which are more appropriately included in the EC (octopus is one example in the North Pacific). We believe that our current process, which includes an annual Ecosystems Considerations Chapter in our Stock Assessment/Fishery Evaluation (SAFE) documents, allows us to review information on each species and detect changes in its status that may necessitate a move from the EC to 'in the fishery'.

Regarding the SSC comments "that stocks can and should be protected without being "in" the FMP" (in an ecosystem context), the Council agrees with this general intent. In fact our current FMPs and management process provide for a high degree of ecosystem consideration for all stocks, whether 'in the FMP' or not, and ecosystem factors may be an important factor in considering OY determination (relative to MSY). However, this point is somewhat off target of the basic question of whether and how stocks are

‘in the fishery’ or not, and the Council does not believe it necessary to alter the guidelines to specify an explicit ecosystem standard for species outside of the FMP.

Overfishing and multi-year impacts

No comment at this time.

ACLs and optimum yield

Regarding the relationship between ACLs and OY, a critical component of the current guidelines is the allowance for an overall OY (as in our multi-species groundfish FMPs). Any requirement for species-specific OY determinations would be extremely difficult to implement, and detrimental to our overall FMP approach. The guidelines could perhaps be clarified in this regard.

Regarding the SSC comments on this issue, the Council agrees with the overall sentiment that “a focus on ‘maximum economic yield’ should not inappropriately overshadow social and ecological considerations in the specification of TACs and OY”. However, the key word for the context of this statement is “inappropriately”, within which are important value and policy judgments. The mandates of the Magnuson-Stevens Act, including NS1 itself, emphasize the attainment of OY and indeed maximizing the economic yield from the fisheries, while appropriately considering non-market/non-consumptive uses and other social and ecological considerations in both the determination and attainment of OY (as noted in issue #1 above). However, our SSC and the Council have witnessed some very questionable attempts to quantify non-consumptive use, resulting in “less than stellar” value determinations. While we agree that it is critically important to continue to allow for these types of social and ecological considerations in OY and TAC determinations, we strongly oppose any additions to the NS1 guidelines which would attempt to require explicit quantification of such values. Doing so would be a contentious, subjective exercise, likely resulting in endless fodder for litigation. We encourage the development of better approaches to ‘account’ for the social effects of management when analyzing management actions and specifying TACs and OY, but believe the current guidelines provide sufficient flexibility to consider social and ecological uses, and do not believe the guidelines should be altered to require explicit quantification and consideration of non-consumptive uses in setting ACLs.

Mixed-stock fisheries and OY

Our only comment is that the guidelines should be clear on what constitutes a ‘mixed-stock fishery’ for purposes of ACL requirements (i.e., is it permissible to establish a single ACL which contains several species of fish), versus a multi-species FMP wherein ACLs are specified for each species within the FMP.

Scientific and management uncertainty

In the North Pacific the current SAFE/TAC-setting process already accounts for considerable scientific uncertainty, in both the use of a Tier system to categorize the level of information associated with each stock, and in the setting of TACs themselves. While the current guideline provide for some flexibility in the face of uncertainty, it is worth explicitly including the ability to evaluate and use options other than the somewhat rigid ‘Pstar’ approach to determine appropriate buffers and the probability of overfishing (see SSC comments under this topic and under ABC control rules), including the ‘decision theoretic’ approach. Given the very evolved, real-time, in-season management processes in place for fisheries in the North Pacific, there should not be only one approach to determining and addressing management uncertainty in the guidelines.

Data poor stocks

In the North Pacific, many of our stocks are designated as ‘in the fishery’, as non-targets, because they do not qualify under the overly restrictive criteria for EC (see comment on issue #1 above); therefore, we are forced to set ACLs for these species, largely based on average historical catch rather actual scientific

information. As noted in the SSC comments, the guidelines should be revised to clarify that not all data-poor stocks require Federal management, and should not be required to be categorized as 'in the fishery' in the FMP, or, in some cases, in the FMP at all.

ABC control rules

No comments at this time

Catch accounting

The SSC comments contain several specific comments in this regard, which underscore the need for clarification in the guidelines. From the Council's more general perspective, the key issue needing clarification has to do with how various sources of fishing mortality must be accounted for in setting ACLs. While the ACL requirements (and current NS1 guidelines) on their face require that all sources of mortality be accounted for, it is somewhat ambiguous as to how 'accounted for' is defined. For example, in the North Pacific small amounts of fish are typically necessary each year to support Exempted Fishing Permits (EFPs) for cooperative research projects, often on short timelines and most often for critical research activities such as bycatch reduction projects. Per our approved FMPs and associated ACL provisions, these small amounts of fish are not deducted from the TAC; rather, these removals are accounted for in the subsequent year's annual stock assessment process. This approach has been called into question by the agency, with the assertion that the Council should be setting aside a specific portion of the TAC for EFPs (and/or fish harvested as part of the annual NMFS stock assessment surveys, which are similarly accounted for). To require the Council to set aside portions of the TAC, for unknown, future EFP needs, could result in fish being left uncaught, at the unnecessary expense to the commercial fisheries. It would also inherently create further allocation issues within the TAC-setting process. This issue should be clarified in any revisions to the NS1 guidelines, preferably in a manner that allows the current practice of accounting for such fish in the subsequent stock assessment, rather than requiring a specific set-aside.

Accountability measures

No comments at this time

ACL exceptions

The North Pacific Council went through a lengthy process of revising and amending our Salmon FMP, partly in response to the ACL requirements (which on their face required us to set ACLs for every salmon stream in Alaska, even though salmon is managed at this level entirely by the State of Alaska). While we ultimately addressed this issue through the 'alternative approach' mechanism allowed in the NS1 guidelines (justifying the State's escapement-based management approach as a legitimate alternative to ACLs), a more straightforward exemption would have been a much more appropriate mechanism. The guidelines should be revised to recognize these unique situations and allow for greater flexibility (including exemptions) in addressing them.

Rebuilding progress and revising rebuilding plans

We believe there is considerable room in this category for improvements to the existing guidelines, including greater flexibility, on a fishery by fishery basis, rather than strict timelines and strict requirements for rebuilding in cases where fishing does not appear to be a factor in rebuilding. The poster child for this situation is the Pribilof Islands Blue King Crab in the North Pacific. This fishery has been closed to directed fishing for decades, and is now in the second iteration of a rebuilding plan after the stock failed to recover after the first ten year rebuilding plan, even though it is projected that elimination of all harvest (even small bycatch amounts) will not result in rebuilding. With the recent Council action to close the area to fishing for groundfish with pot gear, virtually all human impacts have been eliminated or minimized, and environmental factors appear to be the only variable affecting (or effecting) rebuilding

of this stock. To require yet another rebuilding plan (every ten years) in this situation is simply a waste of Council and agency staff and fiscal resources. It makes more sense to allow an existing FMP (rebuilding plan) to be extended in cases where fishing mortality can be demonstrated to be *de minimus*.

Other

The ANPR also request comments on the appropriateness and utility of using 'technical guidance reports' or 'policy directives' to clarify aspects of the NS1 guidelines, as opposed to amending the guidelines themselves. This raises some interesting policy and legal questions. While it may be more expeditious to effect changes in interpretation of the guidelines through 'policy directives', this approach can also be seen as circumscribing public process to some degree, and allowing the agency to make changes to the guidelines in a subjective manner. On the other hand, it may provide for greater flexibility in the interpretation of existing portions of the guidelines, some of which are 'one-size fits all' and would benefit from a more flexible application. Indeed, situations such as the Salmon FMP described above would have benefitted greatly from a simple policy directive. If it is possible to provide 'technical guidance' or 'policy directives' outside of the guidelines, why has the agency not done so in the numerous occasions to date where such an approach could have expedited the process greatly? This also raises the broader question of what 'force of law' do the guidelines contain? To date, the agency has strictly interpreted the guidelines as having the force of law, though this appears contrary to Congressional intent. We believe that the question of whether to utilize 'policy directives' hinges upon the greater question regarding the force of law contained within the current, or future revised, guidelines.

Conclusion

We appreciate the opportunity to provide these initial comments on potential revisions to the NS1 guidelines. We understand that if the agency proceeds to revise these guidelines, there will be ample opportunity for the public, and the Council, to provide additional, more specific comments regarding proposed revisions.

Sincerely,

A handwritten signature in blue ink that reads "Chris Oliver". The signature is fluid and cursive, with the first name "Chris" being more prominent than the last name "Oliver".

Chris Oliver
Executive Director

Attachment

Cc: Galen Tromble
Glenn Merrill
Pat Livingston